IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1124 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

JASHWANT RAMANBHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR GM AMIN for Appellant

MR SP DAVE ADDL.PUBLIC PROSECUTOR for Respondent

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 15/09/98

ORAL JUDGEMENT

Being aggrieved by the judgment and order dt. 11th September, 1997, passed by the learned Additional Sessions Judge, Kheda at Nadiad in Sessions Case No.42 of 1997, convicting the appellant of the offences punishable under Secs. 498A and 307 of I.P.Code as well as Secs. 3 and 4 of the Dowry Prohibition Act; and sentencing him to suffer rigorous imprisonment for three years and fine of Rs.10,000/- i/d. to undergo simple imprisonment for six

months relating to the offences punishable under Sec. 498A, and undergo rigorous imprisonment for a period of seven years with a fine of Rs.20,000/-, i/d to undergo simple imprisonment for a period of one year relating to the offence punishable under Sec.306 of I.P.Code and not separately sentencing of the offences punishable under Secs.. 3 and 4 of the Dowry Prohibition Act, the original accused has preferred this appeal.

2. In order to appreciate rival contentions, few facts may be stated. Mohanbhai Arjanbhai Dabhi resides at Bangaljini Muwadi situated in the District of Kheda. The name of his wife is Santokben. Manjulaben at present aged about 19 years is his daughter. She married the appellant before about five years. The appellant and Manjulaben were residing together along with the parents of the appellant. The appellant was not earning. He was, therefore, often demanding money and dowry. Manjulaben was having no money. She was then compelled to go to her father and bring money, but she was helpless, and therefore, she was ill-treated. She was often beaten, taunted and harassed. Once she had gone to her father to take money so as to get rid of such daily miseries she was passing through, but as her father being poor, she could not bring the money. She returning to her matrimonial home showed inability to help the appellant. She was then continued to be treated roughly. Shortly thereafter, on 25th June, 1996 at 22-00 hrs, when no one except the appellant was present in the house, an attempt was made to murder her. The appellant poured kerosene on the person of Manjulaben, set fire and caused burn injuries. At that time, the parents of the appellant were sleeping outside the house. Manjulaben shouted for help. Hearing her shrieks, the neighbours rushed to the place of incident. She was rescued and was taken to the hospital at Mahemadabad. A complaint was then lodged. The Police, after investigation was over, filed the chargesheet in the Court of the learned Judicial Magistrate First Class at Kheda. As he was having no jurisdiction to try the case for the offence punishable under Sec. 307 of I.P.Code, he committed the case to the Court of Sessions at Nadiad which came to be registered as Sessions Case No. 42 of 1997. The case was assigned to the learned Additional Sessions Judge at Nadiad, who, hearing the parties on merits, delivered the judgment and convicted and sentenced the appellant as stated hereinabove. It is against that judgment and order of conviction, the present appeal is filed.

3. Mr. Amin, the learned advocate representing the appellant contended that the learned Additional Sessions

Judge erroneously appreciated the evidence on record, and becoming sympathetic, as well as sentimental, erroneously passed the order in question. There was, in fact, no evidence on record to convict the appellant. No doubt, Manjulaben, the victim, was supporting the case of the prosecution, but her evidence was not free from doubt. The scrupulosity in her evidence has been lost the sight of the lower court. As there was no corroboration on record, it was not proper on the part of the learned Additional Sessions Judge to place sole reliance on the evidence of Manjulaben and convict the appellant.

4. In reply to such contention, Mr. S.P.Dave, the learned APP addressing the court submits that the evidence of Manjulaben suffers from no infirmity or defect. Her evidence is reliable and leaves no room to doubt. She is also corroborated by the Doctor who treated her in the hospital at Mahemedabad. It is also the submission of Mr. Dave that such types of cases are going berserk, the court must heavily come down upon the accused and pass exemplary sentence. He then urged me to dismiss the appeal and maintain the order.

5. No doubt, in such cases, if the charge is proved, the Court should heavily come down upon the accused and inflict exemplary sentence commensurating with the wrongs done, but the court will be helpless, if the prosecution fails to establish the charge beyond reasonable doubt. Whether, in this case, beyond reasonable doubt, the charge is established, is the crucial point that arises for consideration. The learned Additional Sessions Judge has placed sole reliance on the evidence of Manjulaben, the victim (Ex.10), stating that in Indian society, the system in which we are living is such that a woman would not rope in her husband falsely. It is also observed that in Indian society, the dowry is not foreign to it, and so such say can well be presumed. Immediately after solemnization of the marriage, in-laws of the bride astutely start demanding the dowry and if their expectations are not satisfied, they, malign and resorting to several devices, rancorously start to harass the bride who being helpless, unsafe & estranged at her matrimonial home, has to face several hazards. Reading the judgment, it appears that the learned Judge has adopted particular ideological or idiopathic approach than legal one overlooking the infirmities in evidence. Ideology at times help appreciating the evidence and so may have scope, provided it is consistent with law, but in this case, perusing the evidence with meticulous care and finicky details, I, for the reasons stated hereinbelow, find that the approach of the learned Judge

is not consistent with the evidence on record and law applicable, as his approach is solely guided by idiopathy, which lose the ground owing to perculiar evidence on record. In other words, howsoever strong the conviction of the Judge based on certain ideology or philosophy may be, the same can not be made the basis for reaching the conclusion for or against one or another party.

6. No doubt, Manjulaben the victim has tried to support the case of the prosecution but she has, making contrary statements, on material point, given fatal blow to the prosecution. At one stage, she, no doubt tries to rope in the accused-appellant, stating that on the ill-fated day at 10-00 p.m., when she was all alone in the house, the appellant poured the kerosene on her person and set fire. She, therefore, sustained burn injuries on her two legs, and her petticoat was partly burnt, but lateron, when in the cross-examination, the questions to test her veracity were put, she admitted that when she was cooking in the kitchen remaining close to the hearth for cooking, she got burn injury. She also made it clear that in her village, kerosene was not available in the market. She has thus given a go-by to the theory of the prosecution and has supported the defence viz. accidental injury. Because of such two contradictory statements, made in the deposition, the learned Judge put the question as to which of the two statements, she made, was true ? Manjulaben has, then again involving the appellant, made it clear that her formar statement that she was burnt by her husband, pouring kerosene, was true. The victim has thus made contrary statements one favourable to the defence and another favourable to the prosecution. In such circumstances, whether the reliance can be placed on such evidence is the point that arises for consideration.

7. Having regard to the facts, circumstances and materials on record, the court has to ascertain, which of the statements out of two or more made by the witness is reliable and true. On perusal along with other materials, if the court finds that particular statement inspiring confidence & leaving no room to doubt is reliable, it is open to the Court to logically conclude accepting that statement leaving aside the another. If the court finds that the evidence is not convincing or there is something causing it to flinch or to remove the doubt that arises corroboration is necessary, it has to try to find out, whether any corroboration is available; and if not available, it may prefer to conclude in favour of the accused, disagreeing with prosecution.

8. In this case, as two contradictory statements are made on the material point and not on negligible or trivial point. As stated by the victim in the market Kerosene was not available at all. Now the same could be procured and brought at home was the point required to be elucidated by the prosecution. As that is not done, prudence dictates for independent corroboration. Unless the statement, to which Manjulaben has adhered to, when the learned Judge put the question, is corroborated, it would not be safe and just to place sole reliance thereon and hold the appellant guilty.

9. It is pertinent to note that Santokben the mother of the victim is examined at Ex.15. She does not support her daughter Manjulaben. According to her, soon after the solemnization of the marriage, Manjulaben had gone to her matrimonial house, her married life was brooming over with pleasure, and she never complained about the ill-treatment or demand of dowry, or any difficulty or trouble or problem. After the incident, immediately on receipt of a message, she & her husband had gone to Bangalji-ni Muwadi. On being questioned, Majulaben did not reply, how it happened, or what had happened to her. Sometime after she was taken to the hospital, when Manjulaben regained consciousness, she did not state anything about the incident to her mother Santokben. It is also the say of her mother that till her evidence was recorded by the lower court, Manjulaben never told her, how the incident happened, and how she got burn injury. She has also made it clear in the cross-examination that the appellant, her son-in-law, was maintaining her daughter well. She has no doubt lodged the F.I.R. but in that regard, it is her say that she merely signed the F.I.R. She does not know, what the Police wrote. It is pertinent to note that no prayer to declare the witness hostile was made on behalf of the prosecution. Reading her evidence, I see no reason to discard the same, because the mother, who would ordinarily know about the miseries & woes of her married daughter, if at all there be any, would not support the defence, she would like to support the prosecution. The prosecution has also assigned no reason as to why the mother does not support it. The prosecution does not thus find support from the mother's evidence.

10. The other circumstances on record also do not support the statement made by Manjulaben roping in the appellant. The prosecution has come out with the case that pouring the Kerosene on the person of Manjulaben, the appellant set fire and caused burns injuries, but

Manjulaben has, in her evidence stated that no Kerosene was available in the market, in her village. She has also stated that she was cooking near the hearth for cooking (Chula), which is suggestive of the fact that using the fire-wood & not Kerosene she was cooking. When the kerosene is not available at all, how the appellant got it, was as stated above required to be explained. No doubt Police seized Kerosene tin assuming that Kerosene must have been kept therein, but that seizure does not provide any corroboration. The muddamal tin was sent for analysis to the Forensic Science Laboratory. It is opined by the Chemical Analyser that it was not smelling of kerosene, but it was distinctively smelling of some other thing than the Kerosene. The tin was, therefore, never used to keep the Kerosene therein, and it was not used for storing Kerosene on that day. Such fact raises suspicion in the theory of the prosecution. It also suggests that to get support to the made out case, a tin was seized. The father of the victim, as alleged by the prosecution from the hospital took away petticoat put on by the victim at the time of incident. The police seized the petticoat from the possession of the father of the victim. When it was seized as per the panchnama drawn at Ex.18, the panchas noted that it was not smelling of Kerosene. Of course, the Chemical Analyser has found that hydrocarbons of Kerosene were found, when the petticoat was examined. When the panchas did not find any particles of Kerosene or smelling of kerosene and the Laboratory found the same, there is a reason to agree with the submissions made on behalf of the appellant, that something unusual was done after the seizure of petticoat. It should also be noted that when the muddamal petticoat was shown to Munjalaben in open court, when her evidence was being recorded, she made it clear that it was not her petticoat. When she has disowned about the same, there is a reason to believe that to rope in the appellant any how, something unusual was done regarding seizure of the petticoat, keeping the real one in the back-ground.

11. The police has recorded the statements of Mohan Arajan, Vinu Punja and Shardaben Dinubhai, but neither of them or those whose statements were recorded, is examined. It is also the say of the victim Manjulaben that hearing the shrieks, the neighbours had rushed to her place, but none of the neighbours is examined. It is not explained, why such evidence though available, is withheld. When the prosecution, without any cause, withholds available evidence, it is a circumstance going to discredit the truth of its case. It is also pertinent to note that the father and mother of the appellant who

were sleeping out of the house are also not examined. Mr. Dave, the learned APP. in this regard has submitted that they would not have supported the prosecution, had they been if at all examined. The prosecution can not, on such ground, drop to examine the witnesses. Even if the prosecution believes that the particular witness would not support the case of the prosecution, the witness must be examined so that the court can form the correct opinion or reach to the logical conclusion, or the court may certainly feel sure that the witness has turned hostile and is not telling the truth. In this case, therefore, non-examination of either of the parents of the appellant and one of the neighbours is also a circumstance raising suspicion in the case of the prosecution. It is the say in defence that victim did not involve appellant while informing the neighbours. It was hence incumbent upon prosecution to examine one of such neighbours. Non-examination is, therefore, fatal to the prosecution.

12. Face with such situation, Mr. S.P.Dave, the learned APP takes me to the evidence of Doctor and submits that involvement of the appellant finds support from the Doctor's evidence (Ex.11). The contention can not be accepted. From the evidence of the Doctor, the fact of burns injury can be said to have been corroborated. The Doctor found that both the legs were burnt and the burn injuries were to the extent of 18% and those injuries were superficial. Except on the point of injury, there is no corroboration available from the Doctor's evidence. He can not say, who set fire, or whether it was an accidental burns. Of course, in the cross-examination, at one stage, he has made it clear that the injuries, he noted, were not possible, if the woman, cooking with the aid of the stove, would sustain burn injuries because of the bursting of the Stove. At this stage, it is necessary to have a look at the evidence of Manjulaben, who, when asked, denied the fact of her sustaining injuries because of the bursting of the Stove. When she has denied the fact, the statement made by the Doctor can not be treated as a corroborative piece of evidence. The contention, under the circumstances gets no ground to stand-up. There is no other evidence on record supporting the case of the prosecution or the say of Manjulaben. Rest of the witnesses, who are examined, are ignorant about the happening of the incident, or the manner in which the incident happened. When they have no personal knowledge, their evidence is not helpful to the prosecution for seeking corroboration to the say of Manjulaben.

13. My attention is drawn by the learned APP to a decision of the Supreme Court in the case of State of West Bengal vs. Orilal Jaiswal & Anr, AIR 1994 SC 1418, wherein it is laid down that non examination of the neighbours cannot lead the court to draw adverse inference. What happened in that case was that when the newly wedded bride was ill-treated and because of the mal-treatment, physical torture and abuses, she committed suicide. In that case, the neighbours were not examined. In that regard, it is held that ordinarily, physical torture or physical hurt on the wife by the husband or in-laws would be made in such a way that the same would not be noticed by the neighbours. If the neighbours have not known to it, it would be of no help to examine the neighbours. I may say that in that case naturally, the neighbours' ignorant on the material facts, or the neighbours who have not seen the incident, and if not examined, the same would not be fatal to the prosecution, but when independent corroboration is found necessary, and the neighbours, knowing about the facts, are not examined, it would certainly lead the court to draw adverse inference. In the case on hand, the neighbours rushed to the place of incident hearing shouts and gathered information from the victim. In view of the matter, to have corroboration, it was necessary to examine one of the neighbours.

14. In the case of Dharamvir and Another Vs. State of Madhya Pradesh, AIR 1974 SC 1156, wherein two statements about identity of the accused were made by the victim; one about not knowing the accused, and another about knowing them for the last two to three years. Such contradictory statements were given no importance, and were considered to be the trivial one, because on the question of assailing, and on the material point, the victim was consistent, and therefore, it was found that the evidence of the victim can not be held to be not worthy of credence. In this case, the victim Manjulaben has, as stated hereinabove, made the contradictory statements, but they are not trivial or negligible, but in view of the facts discussed hereinabove, the same being on material particulars, giving rise to suspicion cannot be ignored or overlooked. The decision cited is, therefore, of no help to the prosectuion.

15. It is also the contention of the prosecution that the appellant, soon after the incident, does not take the victim to the hospital. The evidence of victim Manjulaben reveals that she was taken to the hospital on the next day in the evening after her father, receiving the message, went there. Such unnatural conduct on the

part of the appellant was reflecting guilty conscious. In this case, there is no scope to accept the contention. If for a long time no attempt to provide medical aid is made, it would certainly reflect the guilty conscious, provided no explanation is offered or the explanation offered is found not appealing. The evidence shows that 27th June, 1996 at 1-30 a.m. she was taken to the hospital, though the incident happened on 25th June, 1998 at 22-00 hrs. Apparently, such conduct without anything explanatory on record, or throwing light on the point would certainly help the prosecution, but explanatory evidence cannot be overlooked. The notions of village people can not be lost the sight of. In this case, it is pertinent to note that the father of the appellant had gone to the house of the victim's father to inform at the earliest and was then waiting for his arrival. It is also pertinent to note that the appellant in those days was not earning is the say of the victim. He must not have the money and would like to go to the hospital after managing for necessary funds, and that can also be borne out from the School Leaving Certificate (Ex.29) which shows that the appellant left the school on 31st May, 1996 and thereafter, within a period of 25 days, the incident has happened. He may not be, therefore, earning and for want of necessary funds, he must be experiencing vacillation & consternation, being dependent solely on his father. On the basis of the submission not controverted, it appears that meanwhile homely treatment was given. Such hard reality of the village people in remote area can not be overlooked. Further above discussd facts & evidence diminishes the value & force of the contention and makes it benumbed. On such conduct, the prosecution can not succeed.

16. On no other ground, the submissions were made. For the aforesaid reasons, the appeal is required to be allowed. The conviction and sentence inflicted by the lower court being unjust & inconsistent with law are required to be set aside.

17. In the result, the appeal is allowed. The judgment and order dt. 11th September,1997 rendered in Sessions Case No. 42 of 1997 by learned Additional Sessions Judge, Kheda at Nadiad convicting and sentencing the appellant as aforesaid are hereby set aside. The appellant is hereby acquitted of the offence with which he is charged. He be set at liberty forth with, if no longer required in any other case. Fine, if paid, be refunded. Bail bonds are cancelled, if executed.

Date: 15/9/1998. ----

(ccshah)